

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.5577 of 2004

1. Rajakka Vitthal Gavade)
who was wrongly described)
as Rajakka Kondiba Wagare)
in T.C. Age 47 years, Occ.)
Household, residing at)
Kasegaon, Taluka Walwa)
District Sangli)
2. Premila Dhanaji Ghutugade)
Age 32 years, Occ:Household))
residing at Kadegaon, Tal.)
Palus, District Sangli)
3. Vimal (Vaishali) Sanjay)
Fasale, Aged 28 years,)
Occ.Household residing at)
Tambve, Taluka Walwa)
District Sangli) ..Petitioners

vs.

Shri Shivaji Vitthal Gavade)
Age 57 years,Occ:Agriculture)
By and through GPOA holder)
Shri Dhanaji Shivaji Gavade)
Age 25 years,Occ:Agriculture)
Residing at Kasegaon, Taluka)
Walwa, District Sangli) ..Respondent

Shri T.S.Ingale for petitioners.
Shri A.M.Kulkarni for respondent.

CORAM: S.B.MHASE J.
14th March, 2006

P.C.

1. Heard both the learned Counsel.
2. Rule. By consent rule is made returnable forthwith.

3. The order passed in Misc.Civil Appeal No.78 of 2002 by the Addl.District Judge, Islampur on 7th May, 2004 is under challenge. Reg. Civil Suit No.75 of 2002 has been filed by the respondent Shivaji Vithal Gawade against the present petitioners. The petitioners are original defendant nos.1 to 3 in the said suit. The suit simplicitor is for permanent injunction to the effect that the petitioners shall not obstruct the peaceful enjoyment of the suit property till final disposal of the suit. In the said suit application under Order 39 Rule 1 and 2 was filed making a prayer to grant interim relief to the effect that the petitioners shall not obstruct the peaceful possession of the respondent/plaintiff. The said application was rejected by the Joint Civil Judge, Jr.Dn., by order dated 24th October, 2002. Against the said order the respondent preferred Misc.Civil Appeal No.78 of 2002 which was decided on 7th May, 2004. The Addl.District Judge, Islampur allowed the said appeal and restrained the petitioners from obstructing the respondent from using and enjoying the suit fields and the crops therein either

personally or through their agents or otherwise by way of temporary injunction till disposal of the suit.

4. After filing of this writ petition, this Court has issued the notice before admission on 6th July, 2004 returnable two weeks and directed to maintain status quo till further orders. By order dated 23rd July, 2004 this Court observed that arguable questions are raised and placed the matter for final disposal in the week commencing from 30th August, 2004. Statusquo was directed to be continued.

5. It appears that the Civil Application No. 2883 of 2004 taken out by the applicants was disposed of on 3rd December, 2004 wherein it was observed by this Court that the dispute is in respect of the standing crop in Gat No.2049 of village Kasegaon appears to have been adjudicated before the Court. Therefore, this Court directed that sugarcane standing in Gat No.2049 situated at village Kasegaon, Taluka Walwa, District Sangli is to be harvested and supplied to the sugar factory viz. Vishwasrao Naik Sahakari Sakhar Karkhana Ltd. The

applicants are allowed to supply the sugarcane in their names. Shri Ingale, learned Counsel for the applicants states that the applicants shall not claim bills from the sugar factory until further orders. Liberty to apply. Civil Application was disposed of on that day.

6. In view of this order passed on Civil Application No.2883 of 2004 the sugarcane cultivated by the petitioner has been supplied to the said sugar factory and amount of the said sugarcane is pending with the said sugar factory. Under these circumstances the matter has appeared before this Court.

7. It is pertinent to note that the dispute between the parties has commenced as a result of death of one Vithal who has expired on 16th July, 2001. The said Vithal is the son of Dhondi Gawade. The said Vithal was married to one Anusaya who has expired on 7th October, 2000 and out of the wedlock of Vithal and Anusaya, Shivaji the original plaintiff/respondent is born. Thus, the respondent is the son of the said Vithal. It is further to be noted that the said Vithal was adopted by one Santu Gawade in the year

1960 and thus the name of Vithal Dhondi was changed to that of Vithal Santu in the year 1960. It is to be noted that the respondent/original plaintiff Shivaji was born out of the wedlock of Vithal and Anusaya prior to the said adoption. It further appears that after adoption the said Vithal married with one Rajakka who is petitioner no.1 and original defendant no.1 and out of the wedlock with Rajakka petitioner no.2 Premila and petitioner no.3 Vimal (Vaishali) were born. Thus, it is evident that plaintiff/respondent was born to the said Vithal out of the wedlock with Anusaya prior to adoption and petitioner nos. 2 and 3 were born out of the wedlock of the said Vithal with Rajakka after adoption. Under these circumstances, succession of Vithal opened on 16th July, 2001. This relation was accepted by each of the parties. However, the question involved in the present matter is not in respect of inheritance or succession to the said property, partition and possession. The respondent has filed the suit against the petitioners stating that he is the exclusive owner of the said property and they shall be prohibited from entering into the said property. There is an eloquent evidence

on record that the petitioners are in possession of the said property. As against that Shivaji is in possession of the property of the said Vithal which was in possession of Vithal prior to adoption. Since the matter has to go under a trial it will be inappropriate at this stage to say as to who is the heir to whom and what are the rights of the respective parties. Therefore, in view of physical possession of properties, this Court finds that the petitioners are in possession of the properties of the said Vithal which Vithal has got as a result of adoption which is the subject matter of injunction suit. Therefore, simplicitor answer is that on the date of the suit the plaintiff/respondent is not in physical possession of the property though assumed for a moment as the claim made by him is entitled to claim a share in the said property or possession of the said property. However, that is the disputed question to be decided if appropriate suit is filed by the respondent. This cannot be done in the present suit. Since the suit is for permanent injunction one will have to look into the dispute as to whether the respondent is in physical possession of the property and

whether the said possession is referable to the lawful title. Since prima facie we find that the land was cultivated by Vithal exclusively during his life time and thereafter by the petitioners, finding of the Trial Court that the petitioner is in possession of the property has to be upheld and there is no reason for the Appellate Court to disturb the finding. Even as of today in view of the order passed by this Court the property is in possession of the petitioner and, therefore, this Court finds it appropriate to allow the writ petition and to quash and set aside the order passed by the lower Appellate Court. Therefore, the writ petition is allowed. The order passed in Misc.Civil Appeal No.78 of 2002 is hereby quashed and set aside. However, the learned Counsel for the respondent made a statement that the suit be expedited. Trial Court is hereby directed to dispose of the suit as expeditiously as possible and preferably within one year from today.

8. In any view of the fact that the order passed by the Appellate Court is being set aside it is needless to say that the price of

the sugar cane supplied to the sugar factory
is to be released in favour of the petitioner.

(S.B.MHASE J.)